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IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1951.

No. 458.

BROTHERHOOD OF RAILROAD TRAINMEN, an Unincorporated Association, and C. O. CARNAHAN, General Chairman, Brotherhood of Railroad Trainmen,
Petitioners,

vs.

SIMON L. HOWARD, SR., and ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, a Corporation,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

## BRIEF FOR THE PETITIONERS.

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## BRIEF FOR THE PETITIONERS.

### OPINIONS BELOW.

The opinion of the District Court (R. 267) is reported at 72 F. Supp. 695. The opinion of the Court of Appeals (R. 339) is reported at 191 F. (2) 442.

### JURISDICTION.

The judgment of the Court of Appeals was entered on September 11, 1951 (R. 352). Petition for writ of certiorari was filed December 3, 1951 and was granted March 3, 1952. The jurisdiction of this court rests on 28 U. S. C., section 1254 (1).

## QUESTIONS PRESENTED.

1. Whether the court has jurisdiction to resolve the jurisdictional dispute herein between the crafts of railroad brakemen and train porters over the right to the performance of certain braking job functions, and to construe and interpret a bargaining agreement relative thereto entered into by the carrier management and the recognized representatives of the craft of brakemen; or whether the jurisdiction of the administrative bodies under the Railway Labor Act over this and similar disputes is exclusive.

2. Whether the crafts of railroad brakemen and train porters, long considered by the carrier and by the crafts themselves as separate and distinct, can by judicial decree be consolidated into a single craft because of the similarity in part of the job functions performed by each; and whether, under the Railway Labor Act, the court can require the representative of the brakemen's craft to represent the craft of train porters notwithstanding the fact that train porters have long maintained their own craft representatives and negotiated their own bargaining agreements and even though prior hereto no question has ever arisen as to any right or obligation of the brakemen's representative to do so.

3. Whether the court may grant injunctive relief against an agreement wherein the carrier agreed with brakemen to discontinue giving to train porters work recognized as brakemen's duties on the ground that the negotiations for said agreement were aided by economic pressure.

4. Whether the injunction ordered by the Court of Appeals would violate the Norris-LaGuardia Act, this being a labor dispute; and whether it would violate the rule that plaintiffs have an adequate remedy.

## STATUTES INVOLVED.

The applicable statutes are the Railway Labor Act, 48 Stat. 1185, 45 U. S. C., sec. 151, and the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C., sec. 101. Pertinent provisions are printed in Appendix, p. 31.

## STATEMENT.

This action involves a collective bargaining agreement entered into on March 7, 1946, between the respondent carrier and the petitioner, Brotherhood of Railroad Trainmen. The agreement provides:

> "Effective April 1, 1946, the practice of train porters performing work generally recognized as brakemen's duties will be discontinued" (R. 222).

The Brotherhood of Railroad Trainmen is the collective bargaining representative of the craft of brakemen employed by the respondent carrier and has had agreements with the carrier on behalf of the craft for many years. The craft of train porters, all of whom are negroes, are employed on many of the passenger trains of the carrier and perform head end braking duties on those trains as well as looking after the needs of passengers and keeping cars clean enroute.

The performance of brakemen's duties by train porters had been a matter of dispute between the brakemen and the carrier for many years (R. 286). This dispute became one of twelve issues on a strike ballot circulated in December, 1945, and the agreement of March 7, 1946, followed (R. 192).

Train porters are, and always have been, recognized by the carrier as a separate craft (R. 233, 272, 277). Continuously, since 1921, they have had their own collective bargaining representatives and contracts covering wages

and working conditions (R. 277). They have never had seniority as brakemen (R. 79, 91). Excepting a relatively short period during government operation of the railroads in World War I, train porters have always received a lower rate of pay than brakemen (R. 271-2).

Following the agreement of March 7, 1946, the carrier determined, for economic reasons, to discontinue the employment of train porters rather than to take away their braking duties and to retain them in its employ.[1] It was conceded by the carrier that the discharge of train porters had not been demanded by the Brotherhood of Railroad Trainmen (R. 129, 133). Notices were given to the train porters by the carrier discontinuing the position of train porter and terminating their employment effective April 1, 1946 (R. 45).

Respondent, Simon L. Howard, Sr., for himself and on behalf of the craft of train porters, filed this action to enjoin the discharge of train porters and the discontinuance of their positions and to set aside and enjoin the carrying into effect of the agreement of March 7, 1946. As grounds for this relief respondent alleged in substance that, by reason of their performance of braking duties, train porters were in fact members of the craft of brakemen and entitled to nondiscriminatory representation by the Brotherhood of Railroad Trainmen; that their separate craft existence and designation as "train porter" and the failure of the Brotherhood of Railroad Trainmen to give them representation was the result of racial prejudice (R. 1-7).

The evidence indicates that a substantial change in train porters' duties and in employment requirements and

1 It was the intent of the carrier to employ chair car porters instead of train porters to care for passengers and cars en route (R. 224). Chair car porters, a craft recently employed by the carrier to relieve train porters of "portering" duties, received less pay than train porters (R. 19, 122).

responsibilities has occurred over the years. The record (R. 259-60) discloses that in 1918 the principal duty of train porters was the care of passengers and cars en route with braking duties being of minor importance. Substantial differences between brakemen and train porters existed with respect to educational qualifications, examination on train rules and responsibility for execution of train orders. In the years following, the introduction of air conditioned equipment and the subsequent employment of chair car porters, who took over much of the "portering" duties of train porters, altered conditions and respondent Howard testified that 95% of his working time at the time of trial was devoted to braking work (R. 122, 134). Differences in educational requirements, examinations and responsibility have largely, if not entirely, disappeared (R. 264).

The director general of railroads, in December, 1918, issued "Supplement 12 to General Order 27," which required all persons performing brakemen's duties to receive brakemen's pay. Thereafter, and for the duration of government control, train porters were paid the brakemen's rate of pay (R. 271-2). After the return of the railroads to private operation respondent carrier reduced the pay of train porters (R. 272). At the same time, train porters, previously unorganized, selected a general chairman and entered into a contract with the carrier and they have ever since had representation and agreements covering wages and working conditions (R. 277). There is nothing to indicate that they ever desired representation by the Brotherhood of Railroad Trainmen and no request for such representation was ever made until shortly before the institution of this action (R. 79-80, 276, 278).

The district court held that the dispute here was a jurisdictional dispute involving two separate crafts and not justiciable. The judgment ordered the proceedings stayed

for a reasonable time in which the train porters might apply to the National Mediation Board for a determination of their claim for reclassification and representation by the Brotherhood of Railroad Trainmen or to the National Railroad Adjustment Board for a determination of their contractual rights to the disputed job functions (R. 288-290). From this judgment respondent Howard appealed. The district court also held that the notice given by the carrier to train porters terminating their employment violated section 2 seventh and section 6 of the Railway Labor Act by failing to give 30 days notice there required and from this holding the respondent carrier appealed.

The court of appeals held that where a jurisdictional dispute resulted in the loss of employment by one of the crafts involved the dispute was justiciable (R. 342-3). It decided that the "exaction" of the agreement of March 7, 1946, by strike threat was illegal and enjoined the parties from giving that agreement its intended effect (R. 345, 350-1). It construed the agreement to effect a consolidation of the crafts of brakemen and train porters, ordered the carrier to recognize the seniority of the individual members of the consolidated craft in accordance with their service status, and ordered petitioner Brotherhood of Railroad Trainmen to act as statutory representative of train porters (R. 350-1).

## SPECIFICATIONS OF ERROR TO BE URGED.

The Court of Appeals erred:

1. In holding the controversy involving the claims of two separate crafts of railroad employees to disputed job functions to be justiciable and in construing an agreement between brakemen and the carrier to effect a consolidation of the two separate crafts.

2. In imposing working conditions of its own invention on the parties through the subterfuge of construing the agreement between petitioners and the carrier in a manner not intended or contemplated by the parties thereto.

3. In denying to a labor organization the right to use economic pressure in collective bargaining by denying to it the intended result of an agreement negotiated with the aid of a strike threat.

4. In granting an injunction in a labor dispute and where the complaining party had not exercised the administrative remedies provided by the Railway Labor Act.

## SUMMARY OF ARGUMENT.

This controversy concerns an agreement of March 7, 1946, wherein respondent carrier promised brakemen that "the practice of train porters performing work generally recognized as brakemen's duties will be discontinued."

The dispute here thus involves the demands of one craft (brakemen) for its own job functions conflicting with the demands of another craft (train porters) to the same job functions. It involves a labor dispute of a jurisdictional nature and is not justiciable. The decision in Slocum v. Delaware, L. & W., 339 U. S. 239, and Order of Railway Conductors v. Pitney, 326 U. S. 561, hold that such jurisdictional disputes involving the claims of two crafts to disputed work are not justiciable.

Because the non justiciability of jurisdictional disputes is so firmly established in the law, respondent seeks to make this a case of race discrimination. He asserts that the performance by train porters of the brakemen's duties in question entitles train porters to representation by petitioners, the representatives of brakemen, and that the failure to afford such representation is the result of racial prejudice.

The duty of representation exists with respect to all members of the craft represented, regardless of race, but does not extend to a competing craft, organized and recognized as a separate craft. The record here establishes and the district court and court of appeals found that train porters and brakemen are separate crafts, organized and recognized as such and having their own separate agreements with the carrier. The craft status of train porters was the responsibility and act of the carrier and accepted by train porters for purposes of representation. It is not based on racial prejudice but on historical differences be-

tween the two crafts and on the acquiescence of train porters.

Train porters are not entitled by law to representation by petitioners because they are not members of the craft of brakemen. Whether they should be reclassified as brakemen presents a representation question that is not justiciable under General Committee, B. of L. E., v. Missouri-Kansas-Texas R. Co., 320 U. S. 323.

The administrative agencies under the Railway Labor Act have jurisdiction over controversies such as is presented here; the National Railroad Adjustment Board over any contractual claims by train porters against the carrier to the disputed work, the National Mediation Board over representation questions. In determining representation questions the Mediation Board can, and in the past has, fixed craft lines and reclassified employees.

Brakemen and the carrier have not in fact agreed to a consolidation of the crafts of brakemen and train porters. The court of appeals, in giving "effect" to their agreement as effecting such a consolidation, and fixing seniority and representation, is imposing on the parties working conditions of its own invention. This is clearly beyond the court's authority.

The court of appeals enjoined the parties from giving the agreement of March 7, 1946 the effect intended by the parties because the threat of strike entered into the negotiations leading up to the agreement. It held the "exaction" of the agreement made its intended effect illegal. The Railway Labor Act does not prohibit the use of economic pressure in collective bargaining or make strikes or strike threats illegal. It does not thus deprive labor of its economic strength but, in fact, protects the right to organize and negotiate and provides voluntary processes to promote agreement. The agreement here was for the

legitimate purpose of securing work admittedly belonging to the brakemen's craft and is lawful and valid.

Injunctive relief is prohibited in labor disputes by the Norris-LaGuardia Act and by decisions of this court excepting only to protect rights created by the Railway Labor Act for which no administrative remedy is provided. The claims of train porters do not involve such rights. The Act does not impose on petitioners any duty to represent them as a separate craft. Whether they are entitled to representation by way of reclassification is not a question of right but may be determined on the basis of all the facts by the Mediation Board. Claims which they as a separate craft may assert to the work do not arise out of the Act but out of their agreements with the carrier and are determinable by the Adjustment Board. As to such contractual claims, the agreement between brakemen and the carrier could not defeat contractual obligations owed by the carriers to train porters.

This controversy concerns a jurisdictional dispute, not a case of race discrimination. The settled law respecting jurisdictional disputes should be applied here, and the decision of the Court of Appeals reversed.

## ARGUMENT.

I.

**The dispute here involves the conflicting claims of two crafts of railroad employees to disputed jobs and job functions and is not justiciable.**

The dispute here, beginning as the demand of one craft for its own job functions and developing into conflicting claims of another craft to the same job functions, is not justiciable.

The craft of brakemen on the Frisco Railway claims it is entitled to perform certain of the job functions performed by the craft of train porters. The porters deny that claim; and insist that they themselves are entitled to said job functions. The job functions involved here are the subject of the agreement entered into March 7, 1946 between the brakemen and the carrier whereby the latter contracted to discontinue giving to train porters work generally recognized as brakemen's duties.

This dispute is clearly a labor dispute of the jurisdictional variety. That this is so would ordinarily be admitted by all. Moreover, that the courts are without power to construe railroad labor agreements is likewise ordinarily now admitted by all. The case of Slocum v. Delaware, L. & W. R. Co., 339 U. S. 239, involving a jurisdictional dispute between the crafts of telegraphers and clerks, so holds. See also Order of Railway Conductors v. Pitney, 326 U. S. 561, and General Committee, B. L. E., v. Missouri-Kansas-Texas R. Co., 320 U. S. 323. Such disputes are simply not justiciable. Even the case of Steele v. L. & N. R. Co., 323 U. S. 192, upon which respondent relies, recognizes this. The opinion of the court in the Steele case says, l. c. 204:

"The question here presented is not one of a jurisdictional dispute, determinable under the administrative scheme set up by the act * * *."

Because the non-justiciability of jurisdictional disputes is now so firmly established in the law, respondent seeks to convert this dispute into one of racial discrimination. Train porters seek to take special advantage because of their color by simply charging this to be a racial issue. Thus, train porters are seeking discrimination in their favor on account of color.

There is no reason at all why a jurisdictional dispute cannot exist between two crafts of different color. When such a dispute does exist, as here, it should be recognized as such. It should not be obscured or doubted simply because other negro employees of the carrier may have been in some other way or at some other time involved in racial conflict. The record in this case may show instances of such conflict, but we submit there is nothing in the record to indicate that this controversy was in any way aided or abetted by such instances.

That the crafts of brakemen and porters are separate and distinct was found both by the district court and the court of appeals. The crafts themselves consider themselves separate and distinct with their own craft representatives and their own schedule agreements. The carrier has at all times considered the two crafts as separate and distinct (R. 233, 272, 277). The Supreme Court of Missouri, in a companion case, found that they constituted separate crafts. State ex rel. St. Louis-San Francisco Railway Co. v. Russell, 358 Mo. 1136, 219 S. W. (2) 340, cert. den. 338 U. S. 849. The record so overwhelmingly supports this view as to require that the dispute be considered as one between two crafts.

Whether train porters should be reclassified as brakemen for purposes of representation is not a justiciable

question. That involves a representation question which this court held is not justiciable. General Committee, B. L. E., v. Missouri-Kansas-Texas R. Co., 320 U. S. 323.

This is not then such a dispute as was present in Steele v. L. & N. R. Co., 323 U. S. 192; Tunstall v. Brotherhood L. F. & E., 323 U. S. 210, and Graham v. Brotherhood L. F. & E., 338 U. S. 232, where a craft representative had discriminated against recognized members of the craft on the basis of race. In those cases the men involved had seniority as firemen and worked under the firemen's agreements with the carrier with rates of pay and working conditions as provided in those agreements. Here train porters are not employed or recognized and do not work as members of the craft of brakemen, and are, therefore, not, as a matter of law, entitled to representation by the brakemen's representative.

The Court of Appeals, while considering the train porters to constitute a separate craft, and the dispute here to be one between two crafts, nevertheless held that where a jurisdictional dispute between two crafts resulted in the displacement of one of the crafts in its entirety, the dispute was justiciable. It thereupon decided that the agreement of March 7, 1946, between the brakemen and the carrier should be construed to effect a consolidation of the two crafts. There are no decisions whatever to support the court's conclusion.

We consider it to be settled law at this time that railway labor disputes requiring the interpretation of agreements or the determination of representation questions are not justiciable. The decision of the court of appeals, however, necessarily holds that jurisdictional disputes are justiciable and that courts may interpret railway labor agreements. The effect of this decision is to limit the Pitney and Slocum cases to the exact facts there present and to otherwise permit judicial determination of such con-

troversies wherever, in the court's discretion, that seems desirable. It makes the decision in Pitney and Slocum exceptions to a rule of justiciability rather than the rule of non justiciability as was clearly intended.

The reasoning of Pitney and Slocum and the earlier General Committee case does not permit any such construction. The jurisdiction of the National Railroad Adjustment Board to interpret agreements and of the National Mediation Board to determine representation disputes, as fixed by section 3, First (i) and section 2, Ninth, respectively, of the Railway Labor Act, is not dependent on such extraneous matters as the court of appeals would make decisive. Certainly, the question of jurisdiction should not hang on the number of men involved or on the discretionary action of the carrier in discharging or retaining in its employ the persons involved.[2] **Neither is a court in any better position to interpret an agreement simply because a whole craft, rather than just part of a craft, loses work.**

The import of the decisions referred to is that the administrative agencies created by the Railway Labor Act have exclusive jurisdiction over the dispute here, the National Railroad Adjustment Board over any claim the train porters may assert to the disputed work based on their agreements with the carrier, the Mediation Board over the question of representation based on reclassification as brakemen.

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There can be no quarrel over the jurisdiction of the Adjustment Board to determine the claim of train porters, bearing in mind that that claim is not, as the court of ap-

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2 The confusion that would necessarily result from the Court of Appeals' decision appears by reference to Missouri-Kansas-Texas R. Co. v. Randolph (8th Cir.), 164 F. (2) 4, Cert. Den. 334 U. S. 818, wherein a similar dispute involving the same crafts over the same job functions as here resulted in the same court holding the controversy to be non-justiciable where the carrier elected to take braking duties away from train porters but to retain them in its employ.

peals thought, to disprove the claims of brakemen to the work (R. 347, 350), but is against the carrier, and for the purpose of interpreting their own agreements with the carrier. Railway Labor Act, section 3, First (i).

The argument of the porters that the National Mediation Board will not decide the question of representation by way of reclassification because of the non-existence of a representation dispute involving an election is of no consequence; nor is the question of the non-acceptance of jurisdiction by the Board material. The Board is obviously not the final arbiter of its own jurisdiction. Airline Dispatchers Association v. National Mediation Board, 189 F. (2) 685; Cf. Order of Railway Conductors v. Swan, 329 U. S. 520. Neither would the absence of such jurisdiction necessarily make such controversy justiciable as we will hereinafter point out.

Section 2, Ninth, of the Railway Labor Act gives to the Mediation Board power to act "if any dispute shall arise among a carrier's employees as to who are the representatives of such employees * * *." While the representation question as asserted by the train porters is not the conventional type of such problem, that is, one in which two or more organizations are asserting the right to represent certain employees, the statute plainly does not limit the Board's authority to such conventional problems. Rather the Board's authority comes into existence "if any dispute shall arise * * * as to who are the representatives of such employees."

The train porters are entitled to representation by the Brotherhood of Railroad Trainmen only if they are now members of the craft of brakemen, or, as to future representation, if they are reclassified as brakemen and brought into the craft. Clearly, they are not now members of the craft working under the brakemen's agreements with the carrier. The Mediation Board, in determining representa-

tion disputes, may take a secret ballot or "utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives." When occasion required the Board has designated the members of the craft involved in the dispute and has reclassified employees, taking members of one craft and placing them in other crafts for the purpose of representation. Switchmen's Union of N. A. v. National Mediation Board, 320 U. S. 297; United Transport Service Employees v. National Mediation Board, 179 F. (2) 446.

The representation question raised here by train porters is dependent on their right to reclassification as brakemen. A decision on reclassification is certainly, therefore, an "appropriate method of ascertaining" their representative and within the scope of the Board's authority.

We think it is evident that a claim for representation by way of reclassification does not present a claim of absolute right, but one to be decided on the basis of all the facts. Intricate questions will necessarily appear and will vary from case to case. The effect upon possible claims of a similar nature, on other properties, or by other crafts, and the effect upon seniority rights and rights of other organizations must be considered. Whether or not the determination of the dispute here is within the broad grant of powers over such controversies given the Mediation Board, it is certain, in any event, that the determination of such problems was not left to the courts and General Committee, B. of L. E. v. Missouri-Kansas-Texas R. Co., 320 U. S. 323, so decided, holding representation disputes not justiciable.

In that decision, it was stated, l. c. 336:

> "It seems to us plain that when Congress came to the question of these jurisdictional disputes, it chose not to leave their solution to the courts. * * * If the present dispute falls within § 2, Ninth, the administrative remedy is exclusive. If a narrower view

of § 2, Ninth, is taken, it is difficult to believe that Congress saved some jurisdictional disputes for the Mediation Board and sent the parties into the federal courts to resolve the others. Rather the conclusion is irresistible that Congress carved out of the field of conciliation, mediation and arbitration only the select list of problems which it was ready to place in the adjudicatory channel. All else is left to those voluntary processes whose use Congress had long encouraged to protect these arteries of interstate commerce from industrial strife. The concept of mediation is the antithesis of justiciability.

"In view of the pattern of this legislation and its history the command of the Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforcible in the courts should be implied."

It is interesting that in the General Committee case this court anticipated the argument of the train porters that the Mediation Board would act in only those disputes that required an election to determine representatives. In a footnote on page 336 it was observed that the Board at that time apparently held to that view. It is evident that this court, in that decision, had in mind the exact question which the train porters have raised in this case. The conclusion is inescapable that the existence or absence of jurisdiction in the Mediation Board in the controversy presented here does not control justiciability.

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The porters contend that they are entitled to be represented by the Brotherhood of Railroad Trainmen. This is a representation question under the Railway Labor Act and nothing more and as such is non justiciable. It is not a question of color.

There remains the argument heretofore stressed by train porters that their existence as a separate craft and

the failure of the Brotherhood of Railroad Trainmen to represent them is the result of racial prejudice.

While we think the facts, as we shall set them forth, clearly show that the craft status of train porters is not the result of racial prejudice, it should be noted that **this craft status was the responsibility of and resulted from the act of the carrier** (R. 180, 227, 233, 277), **and petitioners are not charged with any responsibility therefor. The issue, so far as petitioners are concerned, is one of duty to represent.** This duty is imposed with respect to all craft members, regardless of race, but **racial conflict alone could not create such a duty where it otherwise does not exist.**

To sustain their contention as to craft status, train porters emphasize the similarities of the two crafts **under today's conditions.** Since the craft status of train porters is by no means of recent origin, however, the question whether racial discrimination is responsible for that status cannot be answered by looking at today's conditions and today's demands. The facts are that today's similarities are the result of changed conditions. Historically, the care of passengers and cars en route was the principal duty of train porters. Vastly different conditions existed with respect to employment qualification, knowledge of train rules and responsibility for train orders (R. 259-60). The introduction of air-conditioned equipment served to lighten their cleaning duties (R. 134) and the recent employment of chair car porters on some trains practically eliminated the "portering" duties of train porters on those trains, since those duties were taken over by the newly employed craft (R. 19, 122).[3]

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[3] This encroachment on train porters' duties by chair car porters has apparently not been protested by them. Undoubtedly, it was the existence of the new craft that caused the carrier to decide to discharge train porters in March, 1946, rather than to retain them in its employ. Chair car porters received less pay and the carrier intended to use them instead of train porters (R. 224).

Not only was this craft status based on real and substantial differences, but it was also based on the acceptance by train porters of this status (R. 277, 278). The fact that, under the present exigencies, they are demanding recognition as brakemen with representation by petitioners does not establish that this was always their desire.[4] Certainly, they never indicated any desire for representation by the Brotherhood of Railroad Trainmen and made no request for such representation prior to the present controversy (R. 79, 276, 278). So far as the record discloses, and we think it is the fact, train porters were satisfied with their separate craft status.

On several occasions courts have commented that it was the intent of the Railway Labor Act of 1926 to recognize crafts as they had previously been organized and not to compel the creation of new craft lines. Order of Railway Conductors v. National Mediation Board, 113 F. (2) 531, 533; Brotherhood of Railroad Trainmen v. National Mediation Board, 88 F. (2) 757, 760; Brotherhood of Ry. & S. S. Clerks v. Nashville, C. & St. L. Ry. Co. (6th Cir.), 94 F. (2) 97, 99. See, also, Railway Labor Act, Sec. 1, Fifth. The effect of the Act was to "freeze" craft lines, subject to change by voluntary action or act of the Mediation Board. The 1934 amendment to the Act required carriers to deal with the representative selected by a craft and with none other. Virginian Railway Co. v. System Federation, 300 U. S. 515. Thus, **the Railway Labor Act does not permit a carrier to change craft lines as they had previously been fixed and accepted for representation purposes.** Prior to passage of the Act, and continuously since, train porters have selected representatives of their own choosing without any indication that this was not in accord with their desires, and the carrier was prohibited

[4] Train porters employed on other carriers do not apparently share the present views of respondent, but are seeking to preserve their employment as a separate craft. Cf. Missouri-Kansas-Texas R. Co. v. Randolph (8th Cir.), 164 F. (2) 4; Hunter v. Atchison, Topeka & Santa Fe Ry. Co. (7th Cir.), 171 F. (2) 594.

by law from dealing with anyone else. To now say, in the face of the facts here, that their craft status is evidence of racial discrimination, requires a denial of their craft history.

Much has heretofore been made of an agreement in effect from 1928 until its cancellation in April, 1949, between four labor organizations, including the Brotherhood of Railroad Trainmen, and the carrier, wherein the carrier agreed not to thereafter employ negroes in train, engine and yard service. Train porters were specifically excepted from the terms of this agreement. It is evident that this agreement neither creates nor evidences any duty of representation by petitioners to train porters. In fact, it emphasizes their separate craft existence and in no way indicates any dissatisfaction on their part with that status.

It should be noted that there are negroes employed by the carrier as brakemen. These men are distinguishable from train porters, since they were employed by the carrier as brakemen, they work under the brakemen's agreements and have wages, seniority and working conditions the same as white brakemen (R. 39). Negro brakemen and white brakemen are alike represented by petitioners (R. 238). Train porters are not so represented, not by reason of race, but because they are a separate craft, organized, recognized and having their own representation as such.

II.

**The decision of the court of appeals consolidating the crafts of brakemen and train porters and fixing seniority and representation imposes on the parties working conditions of the court's invention and is beyond the authority of the court.**

The solution of the court of appeals to this controversy was to construe the agreement of March 7, 1946, to effect

a consolidation of the crafts of brakemen and train porters. The parties were enjoined from giving the agreement any other effect, the carrier ordered to recognize seniority of the individual members of the two crafts in accordance with their service status and petitioner Brotherhood ordered to act as statutory representative of the previously separate craft of train porters.

While the court appears to base its action on a construction or interpretation of the agreement, it is admitted that the parties did not in fact agree to a consolidation of the two crafts or the determination of seniority and representation questions. Neither were the parties to the agreement in any doubt or dispute as to the construction or meaning of the agreement so as to require a construction thereof. It is plain that the result arrived at by the court constitutes, in fact, an entirely new agreement written by the court, imposing on the parties working conditions designed by the court to satisfy it with respect to the situation before it.

This action of the court goes far beyond the issue of justiciability. It raises the further issue of the authority of a court to impose on the parties to a labor dispute working conditions of its own invention. We doubt that anyone will take issue with our assertion that such authority does not exist.

The protection of the right of labor to organize, select representatives, bargain and enter into agreements covering wages and working conditions was one of the purposes of the Railway Labor Act. Texas & N. O. R. Co. v. Brotherhood Ry. & S. S. Clerks, 281 U. S. 548, 570; Virginian Ry. Co. v. System Federation No. 40, 300 U. S. 515. One of the safeguards provided by this Act was the imposition upon the carrier of a positive duty "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions."

Railway Labor Act, Sec. 2, First. This Court declared in Terminal Railroad Association v. Brotherhood of Railroad Trainmen, 318 U. S. 1, 6:

> "The Railway Labor Act, like the National Labor Relations Act, does not undertake governmental regulation of wages, hours, or working conditions. Instead it seeks to provide a means by which agreement may be reached with respect to them."

Obviously, the right to organize and make agreements with one's employer is of little use if agreements, when so made, may be set aside at the will of a court and replaced with conditions of employment which that court deems more suitable.

That the changes in working conditions imposed by the court could be accomplished by agreement of the parties is not here denied. But they were not so agreed to by the parties and the decision of the Court of Appeals giving such "effect" to the agreement of March 7, 1946, cannot alter that fact. These changes, affecting the working conditions of all the members of both crafts, were of the court's own invention and clearly beyond its authority.

III.

**The decision of the Court of Appeals granting injunctive relief against the agreement of March 7, 1946, because the negotiations leading up to said agreement were aided by economic pressure, denies to employees the fundamental right to strike or threaten strike and deprives them of the economic strength, gained through organization, which is necessary to effectively bargain and reach agreements.**

The Court of Appeals held that the only legal effect that could be given the agreement of March 7, 1946, was to effect a consolidation of the crafts of brakemen and train porters. If given the effect intended by the parties, this agreement, in the view of the court, was illegal.

The reason why the intended effect of this agreement is held illegal is that the agreement resulted from the threat of strike by the brakemen. Some fourteen times in the opinion is the agreement referred to as an "exacted agreement" or an "exaction." It is asserted that the agreement resulted, not from a claim of right in a jurisdictional dispute, but solely from the strike threat—"and on this basis alone obtained the agreement here involved" (R. 349). A distinction is inferred between a "defensive strike," which the court thought was a "fundamental and most sacred weapon" the use of which trainporters were being deprived (R. 348), and a strike for economic gain, such as the brakemen threatened and which the court obviously condemns.

The only reason stated by the court for its finding of illegality is that petitioners' "predatory exaction" of the agreement constituted "artificial interference" with the employment rights of train porters (R. 345). It was not the agreement itself or its results that constitute this "artificial interference." It was the "predatory exaction" of the agreement that brought about this result.

By "predatory exaction" the court referred to the strike threat that accompanied the brakemen's demands. It argued that the claims of the brakemen were without contractual basis and hence without any support excepting the strike threat (R. 345, 348).[5]

It should be noted that the carrier has at no time sought relief with respect to this agreement. In the Court of Appeals it argued for affirmance of the judgment of the District Court except only the holding invalidating the notices

5 The assumption by the court that brakemen were without contractual right to the disputed work cannot be reconciled with the facts. Train porters have admitted that this work belongs to the craft of brakemen. The agreement of March 7, 1946, refers to the work as "brakemen's duties." Brakemen had in fact performed this work on trains 1 and 2 of the carrier for many years (R. 122-3). To find that this work is not covered by the previous agreements of the brakemen with the carrier, when the court did not even have those agreements before it, is an obvious impossibility.

of discharge for failure to give 30 days notice (R. 342, Note 3).

Had the agreement of March 7, 1946, been negotiated without the use of economic pressure it is plain that nothing in the opinion of the court would hold the agreement illegal. The decision reserves jurisdiction in the District Court to set aside or modify its injunction, and thus to let the agreement and its results stand, if the claims of the brakemen are sustained by the Adjustment Board. Thus, resort to the Adjustment Board is made a compulsory substitute for the use of economic pressure and agreement and clearly shows that the decision of invalidity rests solely on the strike threat.[6]

We consider it neither necessary nor appropriate for us to extensively argue the right of labor generally to the use of economic pressure and the threat of strike. This court and Congress have too often recognized the right of labor to use economic pressure for the betterment of its condition as well as for "defensive" purposes for us to attempt to add anything to the knowledge of the court on this issue. Insofar as the Railway Labor Act bears on this point, it may be noted that that Act did not attempt to make strikes unlawful, but simply provides means to avoid them.[7] It requires negotiation and encourages agreement and nowhere invalidates agreements because economic

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6 Several awards of the First Division of the Adjustment Board involving other railroads had held that the use of train porters for braking duties violated the brakemen's agreements with the carrier. Five of these awards were urged upon the carrier during the negotiations leading up to the agreement of March 7, 1946, as a reason for agreement since the Adjustment Board had, in these awards, interpreted brakemen's agreements with respect to the disputed work (R. 226). Further, all of the cases on the strike ballot were not within the jurisdiction of the Adjustment Board. Case No. 1, a demand for cancellation of an agreement dated March 25, 1939, to which demand the carrier had not acceded, was such a case (R. 195). Thus, in the view of brakemen, resort to the Adjustment Board could not provide a solution to all the matters in dispute and, in the case of the controversy involved here, was unnecessary because of the earlier awards.

7 Washington Terminal Co. v. Boswell, 124 F. (2) 235, 247, Aff'd 319 U. S. 732; Railway Labor Act, Section 1, Fifth.

pressure entered into their making. It provided voluntary processes where agreement fails but did not prefer those processes over agreement or make resort to those processes compulsory. In short, it did not take away from labor the economic weapons possessed by it, but added remedies not previously available, the resort to which might eliminate the need for economic pressure.

The history of labor relations in the railroad industry clearly demonstrates the unwillingness of the carriers in the past to voluntarily negotiate and reach agreements with representatives freely selected by employees. Cf. Texas & N. O. R. Co. v. Brotherhood of R. & S. S. Clerks, 281 U. S. 548, 558-9; Virginian Ry. Co. v. System Federation, 300 U. S. 515, 545-6. The Railway Labor Act and its amendments in 1934 had, as a prime objective, the protection of the right to organize and a compulsion to so negotiate and to agree if possible. Bearing in mind the conditions existing at the time of passage of the Act it is not reasonable to say that Congress intended it to operate as a denial of the right to use economic pressure in collective bargaining. Such a construction of the Act, instead of promoting agreement, would deprive labor of the economic strength gained through organization, which is essential to protect its legitimate interests and achieve agreement.

Nowhere in the Railway Labor Act is the right to strike or to threaten strike prohibited. Only where an Emergency Board is appointed (Section 10) is the right to strike limited for a 30 day period. The denial of a right so fundamental and so essential should not be implied.

We submit that the agreement of March 7, 1946, is valid as construed by the parties and that no grounds exist for holding it otherwise. It was in furtherance of a legitimate purpose of the craft of brakemen to secure for itself the work belonging to it and was brought about with the

lawful aid of economic pressure.[8] Its effect, as intended by the parties, should not be enjoined.

## IV.

**Injunctive relief in labor disputes such as this is prohibited by the Norris-LaGuardia Act and by decisions of this court.**

The decision of the court of appeals grants injunctive relief in a dispute which the court finds to be between two crafts of employees over the right to perform certain brakemen's duties on the carrier's passenger trains. On the court's own findings, such equitable relief is beyond its authority as limited by General Committee, B. L. E., v. M.-K.-T. R. Co., 320 U. S. 323; Order of Railway Conductors v. Pitney, 326 U. S. 561; and the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C., sec. 101 et seq. General Committee denied equitable relief because of the non justiciability of representation disputes under the Railway Labor Act. Pitney held that until the complaining craft had established its own contractual rights to the work through award of the Adjustment Board it could not establish the absence of a remedy at law, prerequisite to equitable relief. The prohibitions in the Norris-LaGuardia Act are based on the public policy therein declared against the granting of injunctions in "labor disputes" except under circumstances and upon conditions not claimed to be found here.[9]

If the train porters were here asserting a justiciable claim of rights created by the Railway Labor Act for

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[8] Senn v. Tile Layers Protective Union, 301 U. S. 468, 481-2; 56 C. J. S., p. 153.

[9] A "labor dispute" and a case involving or growing out of a "labor dispute" as defined in Sections 13 (c) and 13 (a) of the Act, respectively, clearly covers the dispute here. These sections, together with Section 1, prohibiting injunctions, appear in Appendix, p. 31. Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. Co., 321 U. S. 50; United States v. Hutcheson, 312 U. S. 219; New Negro Alliance v. Sanitary Grocery Co., 303 U. S. 552, 561.

which no administrative remedy were provided, Steele v. L. & N. R. Co., 323 U. S. 192, would admittedly authorize equitable relief. That the controversy here does not present such a claim appears from the classification of disputes which the court there distinguished from the one before it, l. c. 204-5:

> "The question here presented is not one of a jurisdictional dispute, determinable under the administrative scheme set up by the Act, Cf. Switchmen's Union of N. A. v. National Mediation Bd., 320 U. S. 297, 88 L. Ed. 61, 64 S. Ct. 95; General Committee of Adjustment, B. L. E., v. Missouri-Kansas-Texas R. Co., 320 U. S. 323, 88 L. Ed. 76, 64 S. Ct. 146; General Committee of Adjustment, B. L. E., v. Southern P. Co., 320 U. S. 338, 88 L. Ed. 85, 64 S. Ct. 142; Brotherhood of R. & S. S. Clerks v. United Transport Serv. Employees, 320 U. S. 715, 816, 88 L. Ed. 420, 493, 64 S. Ct. 260, 435, or restricted by the Act to voluntary settlement by recourse to the traditional implements of mediation, conciliation and arbitration: General Committee of Adjustment, B. L. E., v. Missouri-Kansas-Texas R. Co., supra (320 U. S. 332, 337, 88 L. Ed. 81, 84, 64 S. Ct. 146). There is no question here of who is entitled to represent the craft, or who are members of it, issues which have been relegated for settlement to the Mediation Board, Switchmen's Union of N. A. v. National Mediation Bd., 320 U. S. 297, 88 L. Ed. 61, 64 S. Ct. 95; and General Committee of Adjustment, B. L. E., v. Missouri-Kansas-Texas R. Co., supra. Nor are there differences as to the interpretation of the contract which by the Act are committed to the jurisdiction of the Railroad Adjustment Board."

The rights claimed by train porters here do not have their origin in The Railway Labor Act. Being members of a separate craft and not members of the craft of brake-

men they are not entitled by law to representation by petitioners. Their claim to representation by way of reclassification is not a matter of right, and is not justiciable, but may be submitted to the Mediation Board for determination. Their claims, as a separate craft, to the work in dispute likewise do not arise from the Act but from their agreements with the carrier and these are determinable by the Railroad Adjustment Board.

In connection with the contractual claims of train porters to the disputed work it should be noted that these claims are in no way prejudiced by the brakemen's agreement with the carrier. This could be a situation where a carrier has twice contracted for the same work, and like other persons in the same fix, it may have to live with its contractual obligations until contractual changes can be effected.

The contractual rights of brakemen cannot be made dependent on the absence of rights in train porters. The controversy here is not between brakemen and train porters as to which has superior rights to the work. While the performance of the duties in dispute exclusively by one craft would normally exclude the other from such performance, any contractual obligation of the carrier with respect to the other craft would not thereby be defeated. It was no defense to a contract action at common law that the defendant might be bound to another with respect to the same subject matter. We submit it was not the purpose of the Railway Labor Act to destroy substantive rights but only to provide administrative procedure for the determination of such rights.

Train porters have heretofore argued that the absence of equitable powers in the Adjustment Board to maintain the status quo pending its award rendered the administrative remedy inadequate and called for equitable relief (R. 6). This argument was disposed of in Pitney with

the observation that the Board may award back pay and order reinstatement of employment. A contrary holding would, of course, mean that nearly every claim filed with the Board would be accompanied by a court action for equitable relief pending award.

We submit that no reason exists why the prohibitions of the Norris LaGuardia Act and the decisions of this court should not be applied and equitable relief denied.

## CONCLUSION.

This controversy involves a jurisdictional dispute, not a case of race discrimination. The existence of racial differences between train porters and most of the craft of brakemen cannot change the nature of the dispute. The settled law respecting jurisdictional disputes should be applied here, as it was applied by the district court. The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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## APPENDIX.

Railway Labor Act, Section 1, Fifth, 45 U. S. C., Sec. 151, Fifth:

> "The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: **Provided, however,** That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Commission."

Railway Labor Act, Section 1 (a); 45 U. S. C., Sec. 151 (a):

> "The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all

disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions. May 20, 1926, c. 347, Sec. 2; as added June 21, 1934, c. 691, Sec. 2, 46 Stat. 1186."

Railway Labor Act, Section 2; 45 U. S. C., Sec. 152;

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

"Third. Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier."

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: **Provided,** (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: **And, provided further,** That nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties."

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees

involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph."

Railway Labor Act, section 3, First; 45 U. S. C., sec. 153, First:

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

Norris-LaGuardia Act, Section 1; 29 U. S. C., sec. 101:

"No court of the United States, as defined in sections 101-115 of this title, shall have jurisdiction to

issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in such sections."

Norris-LaGuardia Act, Section 13; 29 U. S. C., sec. 113:

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section)."

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."